

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-219-E - ORDER NO. 2007-835
NOVEMBER 13, 2007

IN RE: Petition of Progress Energy Carolinas, Inc. to)	ORDER DENYING
Terminate Service)	MOTION FOR
)	RECONSIDERATION
)	AND REHEARING

This matter comes before the Public Service Commission of South Carolina (“Commission” or “PSC”) pursuant to the Motion for Reconsideration filed by Mrs. Beatrice Weaver (“Respondent” or “Mrs. Weaver”), in which Mrs. Weaver urges that we reconsider and vacate Order No. 2007-298, issued on or about May 3, 2007. For the reasons explained herein, we deny Mrs. Weaver’s motion as untimely pursuant to S.C. Code Ann. §58-27-2150, and reiterate that the Commission acted properly within its discretion pursuant to S.C. Code Ann. Regs. 103-862 (renumbered as S.C. Code Ann. Regs. 103-838 effective April 27, 2007) when it dismissed Mrs. Weaver’s counterclaims without prejudice in Order No. 2007-298. As Order No. 2007-298 is now a final order not subject to subsequent reconsideration by the Commission, Mrs. Weaver may seek relief from the order only in the appellate courts of South Carolina.

Mrs. Weaver received her copy of Order No. 2007-298 on Saturday, May 5, 2007. The date of receipt was indicated on the U.S. Postal Service receipt card, which bore Mrs. Weaver’s signature. On May 17, 2007, Mrs. Weaver faxed her motion for

reconsideration to the Commission's offices. The Commission's Hearing Officer issued his directive on May 24, 2007, finding that the motion was untimely pursuant to S.C. Code Ann. §58-27-2150. Section 58-27-2150 requires that such motions be made within ten days after service of notice of entry of the order or decision.

Ms. Weaver argues that Rule 6(e), S.C.R.C.P., requires the addition of five days to the time prescribed in S.C. Code Ann. §58-27-2150, and that her motion for reconsideration was therefore timely filed. Ms. Weaver is mistaken, however, as Rule 6(e) is inapplicable to the time in which a litigant is allowed to file a motion to reconsider or a notice of appeal. Rather, Rule 6(e) adds five days to the time in which a litigant is required to respond to pleadings and discovery requests served by mail.

In Witzig v. Witzig, the South Carolina Court of Appeals stated:

Rule 6(e), SCRCP, does not provide an additional five days to file a notice of intent to appeal. Unlike Rule 74, SCRCP, and S.C.Code Ann. § 62-1-308(a), which pertain to appeals, Rule 6(e) is a pleadings rule and applies only when service is effective upon mailing. The extra five days provided by Rule 6(e) compensates for the time notice is in the mail. James F. Flanagan, South Carolina Civil Procedure 52 (2d ed. 1996).

Witzig v. Witzig, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996). The Witzig rationale also applies in this matter.

As was the case in the Witzig matter, the present dispute concerns the allowable time to respond to an order, not a pleading, and on that rationale alone, Rule 6(e) would not apply here. Furthermore, the policy reasons for the five-day extension provided in Rule 6(e) would not support an extension here. The situation presented in the present case is easily distinguished from that presented when a party serves a pleading or

discovery request upon another by first class mail and deems service effective upon mailing. In the case of service of a pleading or discovery request by mail, the date of receipt is indeterminate, and the Rule adds five days to the response period to compensate for time in the mail, as the Court of Appeals explains. However, in this case, there is undisputed proof of the actual date of receipt of the order by certified mail. Thus, there is no need for adding five days to compensate for time in the mail. Ms. Weaver received actual notice of the entry of the order on May 5, 2007. The ten-day time period in which Ms. Weaver was required to file her motion for reconsideration began running on May 6, 2007, the day following the date on which the order was received. The tenth day after receipt was May 15, 2007.

Because Mrs. Weaver made her motion outside the statutory ten-day period, the Commission finds that the Hearing Officer was correct in his application of the statute. However, rather than relying exclusively upon Ms. Weaver's untimeliness as the basis for affirming our prior order, and to provide finality to our prior judgment for purposes of any possible appeals, we have elected to exercise our discretion and rule upon the merits of Mrs. Weaver's motion as well.

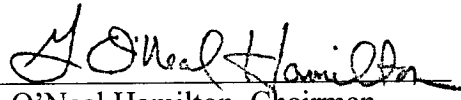
We have considered all of the arguments presented by Mrs. Weaver, and find that none have merit. This Commission is vested with broad discretion to control its docket, and Regulation 103-838 affords the Commission the discretion to determine good cause for granting a request for continuance. The Commission determined that Mrs. Weaver's history of repeated requests for continuances fairly indicated that she was unable or unwilling to pursue her counterclaims at the present time, and that under these circumstances, it was appropriate to dismiss Mrs. Weaver's counterclaims. We know of

no court or quasi-judicial body upon which a litigant may unilaterally impose a continuance. Under the specific facts here, and in consideration of the multiple continuances granted to Mrs. Weaver previously, we believe it an unreasonable waste of judicial resources to maintain Mrs. Weaver's counterclaims on our docket ad infinitum. Therefore, we reiterate and affirm our prior denial of Mrs. Weaver's request for continuance and dismissal of her counterclaims without prejudice.

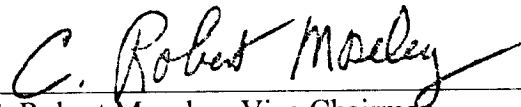
CONCLUSION

The motion of Mrs. Beatrice Weaver to reconsider and vacate Order No. 2007-298 is, for the foregoing reasons, denied in its entirety.

BY ORDER OF THE COMMISSION:


G. O'Neal Hamilton, Chairman

ATTEST:


C. Robert Moseley, Vice Chairman

(SEAL)